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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,407	12/04/2004	Nimrod Gal-Oz	18481-005	4031
7590 12/17/2008				
Sonia K. Guterman, Esq. Lawson & Weitzen, LLP Suite 345 88 Black Falcon Avenue Boston, MA 02210-2414			EXAMINER HICKS, CHARLES N	
			ART UNIT 2424	PAPER NUMBER
			MAIL DATE 12/17/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,407

Applicant(s)

GAL-OZ, NIMROD

Examiner

CHARLES N. HICKS

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/4/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9/29/2008 have been fully considered but they are not persuasive. Applicant's argument on page 8, that Bornstein fails to disclose a method or apparatus for selecting optimized transmission path in a television distribution network, is understood, but the examiner disagrees. Bornstein's mapping process that generates three routes for data to travel is a method for selecting optimized transmission path. One of which is the best or optimum and that one is selected.
2. Applicant's assertion on page 8, that Bornstein fails to use the phrase "television distribution network", is understood. Examiner relies on Urdang to disclose this attribute. Applicant's assertion on page 8, that Bornstein fails to disclose receiving information transmitted to a set-top box, is understood. Examiner relies on Urdang to disclose the set-top box attribute.
3. Applicant's assertion on page 9, that Bornstein fails to disclose building or creating a list of available transmission paths for set-top box, is understood. Bornstein's mapping process that generates three routes for data to travel is a method for selecting optimized transmission path and creating the list of available paths. Applicant's assertion on page 9, that Bornstein fails to disclose selecting an optimal transmission path based on the list and the metadata, is understood. Bornstein discloses in paragraph 32 in servicing a user request, *metadata refers to the set of all control options and parameters for the requested object to be provided to the server*. This is contrasted with the paths of available transfer is used to determine the optimal path.

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4. Applicant's assertion on page 10, that Urdang fails disclose selecting a physical path to a set-top terminal, is understood but not well taken. Examiner notes that the reference does not use the word "physical", but coaxial cable is a physical tangible object and thus meets the limitations of the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 17-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urdang (US 2007/0083902 A1), hereinafter referred to as Urdang, in view of Bornstein (US 2008/0008089 A1), hereinafter referred to as Bornstein.

7. Regarding claim 17, Urdang discloses a method for selecting optimized transmission path in a television distribution network, the method comprising the steps

of: receiving information relating to data to be transmitted to at least one set-top box, said information comprising metadata related to said data to be transmitted and an identification of said at least one set-top box (**fig. 1-4, pg. 5, paragraphs 46-48**);

building a list of available transmission paths for the said set-top box (**fig. 1-4, pg. 5, paragraphs 47-48**);

and transmitting the data to the set-top box using said selected transmission path (**fig. 1-4, pg. 5, paragraphs 47-48**).

However Urdang fails to disclose selecting an optimal transmission path based on said list and said metadata. Borstein discloses selecting an optimal transmission path based on said list and said metadata (**fig. 1, pg. 3, paragraphs 32-33**). Motivation to combine the references is due to the fact that both references deal with transmission of requested information via multiple transmission paths in a network. Therefore the invention would have been obvious to one of ordinary skill in the art at the time of the invention to ensure data is received timely.

5. Regarding claim 18, Borstein discloses the method wherein said metadata comprises information selected from a list consisting of: type of data to be transmitted, type of application that generated the data, type of application to receive the data, latency constraints of the data, or a combination thereof (**fig. 1, pg. 3, paragraph 32**).

6. Regarding claim 19, Urdang discloses the method wherein said step of building further comprises the step of retrieving information related to said set-top box from a database (**fig. 1, pg. 2, paragraphs 28-29**).
7. Regarding claim 20, Urdang discloses the method wherein the retrieved information comprises information on available transmission paths and capabilities of the set-top box (**fig. 1, pg. 2, paragraphs 28-29**).
8. Regarding claims 21-23, Urdang discloses the method further comprising the step of querying the set-top box to obtain data indicative of available transmission paths thereto (**fig. 1-4, pg. 4-5, paragraphs 44-46**).
9. Regarding claim 24, Borstein discloses the method further comprising the step of getting information relating to network load and creating said list in accordance with the obtained load information (**fig. 4-5, pg. 4, paragraph 37**).
10. Regarding claim 25, Borstein discloses the method wherein said step of selection is facilitated by a policy (**fig. 3-4, pg. 4, paragraph 36**).
11. Regarding claim 26, Borstein discloses the method wherein said policy is modifiable (**fig. 3-4, pg. 4, paragraph 36**).

12. Regarding claim 27, Borstein discloses a method wherein said step of building further comprises the step of retrieving information relating to load conditions in said distribution System, and wherein said list is constructed in accordance with said load conditions (**fig. 1, pg. 3, paragraph 33**).

13. Regarding claim 28, Urdang discloses an apparatus for selecting, optimized transmission in a television distribution network having a headend and a plurality of set-top boxes, the apparatus comprises: a list creator, adapted to create a list of available transmission paths from the headend to a specified set-top box, or a group of specified set-top boxes (**fig. 1-4, pg. 2-3, paragraphs 2—32**).

However Urdang fails to disclose a data route selector, adapted to automatically select the best applicable transmission path from said list for transmitting based on a policy applied to the combination of at least a data type to be transmitted and said list. Borstein discloses a data route selector, adapted to automatically select the best applicable transmission path from said list for transmitting based on a policy applied to the combination of at least a data type to be transmitted and said list (**fig. 1-2, pg. 3, paragraph 34**). Motivation to combine the references is due to the fact that both references deal with transmission of requested information via multiple transmission paths. Therefore the invention would have been obvious to one of ordinary skill in the art at the time of the invention.

14. Regarding claim 29, Urdang discloses an apparatus wherein said list creator further comprises an information retriever module adapted for querying a data base for information regarding said set-top box capabilities and transmission paths available thereto (**fig. 1, pg. 2, paragraphs 29-30**).

15. Regarding claim 30, Urdang discloses an apparatus wherein said information retriever module is further adapted to query said set-top box for information on available transmission paths available thereto, or the its capabilities, or a combination thereof (**fig. 1, pg. 2, paragraphs 29-30**).

16. Regarding claim 31, Urdang discloses an apparatus wherein said list creator further comprises an information retriever module adapted to query said set-top box for information on available transmission paths and capabilities of said set-top box (**fig. 1, pg. 2, paragraphs 28-30**).

17. Regarding claim 32, Borstein discloses an apparatus wherein said list creator is further adapted for retrieving information relating to network load and creating said list in accordance with the load information (**fig. 1-2, pg. 3, paragraphs 33-34**).

18. Regarding claim 33, Borstein discloses an apparatus wherein said list creator is further adapted to retrieve information relating to load conditions of said distribution

network, and utilize said information in creating said list (**fig. 1-2, pg. 3, paragraphs 33-34**).

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **CHARLES N. HICKS** whose telephone number is (571)270-3010. The examiner can normally be reached on M-F 7:30AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/
Supervisory Patent Examiner, Art
Unit 2424

CNH